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Filed : September 12, 2000

## REMARKS

By this paper, Applicant has added new Claims 20-26. Claims 2-19 are unchanged by this paper and are pending. Thus, Claims 2-26 are presented for examination. Reconsideration of prior rejections and allowance of all claims in light of the following remarks is respectfully requested.

### Discussion of Finality of Office Action

The Examiner has made this Office Action final. *Office Action, at Page 5*. In this Office Action, the Examiner rejected Claims 7, 12, and 17 under 35 U.S.C. § 112. *O.A., at Page 2*. No rejection of any claims under 35 U.S.C. § 112 was made in the previous Office Action. Applicant submits that, as the Office Action included a new ground of rejection and this new ground of rejection was not necessitated by an amendment by Applicant, nor was it necessitated by the filing of an IDS with fee, it was improper under M.P.E.P. 706.07(a) to make this Office Action final. Applicant respectfully requests withdrawal of the finality of the Office Action under M.P.E.P. 706.07(d) if a Notice of Allowance is not given.

### Discussion of Rejection Under 35 U.S. C. § 112, second paragraph

The Examiner has rejected Claims 7, 12, and 17 under 35 U.S.C. § 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In particular, Examiner argued that the claims were indefinite because the claims state that the guidelines are the Consolidated Budget Reconciliation Act or the Omnibus Budget Reconciliation Act, and acts or laws are subject to being amended or repealed.

Applicant respectfully submits that, in contrast to a law which may change when it is amended or repealed, an act whose provisions are affected by a subsequent act is not itself modified. The Consolidated Budget Reconciliation Act and the Omnibus Budget Reconciliation Act are not subject to modification, although subsequent acts may result in the language of COBRA and OBRA not representing the current law. Even if the Act were to be repealed, and thus the provisions of the act would have no legal effect, one could still follow the guidelines set out in those acts, even though those guidelines no longer represent the current law. Because

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there is no possibility that the acts themselves will be modified, Applicant respectfully submits that Claims 7, 12, and 17 are sufficiently definite. Applicant respectfully requests that the rejection be reconsidered and withdrawn.

Discussion of Rejection Under 35 U.S.C. § 102(a)

The Examiner has rejected Claims 2 and 9 under 35 U.S.C. 102(a) as being anticipated by Aeromed (<http://www.aeromed-software.com>, February 5, 1998).

Applicant submits herewith a Rule 131 Declaration and corresponding Exhibit Sheets A1, A2, A3, B1, B2, B3, C, D, E1, E2, and E3 to overcome the Aeromed reference. Specifically, Applicant submits a *Declaration Under 37 C.F.R. § 131 To Overcome Aeromed* by Scott J. Jones and Kevin C. Hutton. Scott J. Jones and Kevin C. Hutton are the joint inventors of Claims 2 and 9.

The *Declaration* includes facts showing a conception of the invention in this country before the effective date of the reference (date attributed to the reference) (37 C.F.R. § 1.31(a) and M.P.E.P. § 715). The showing of facts are such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application.

The features of a computerized system for managing airborne transportation of a patient, comprising a first module comprising instructions for dispatching an aircraft carrying an airborne emergency transport crew to a patient site, a second module comprising instructions for generating a calculated flight path to the patient site, and a third module comprising instructions for tracking the actual flight path of the aircraft and determining whether the actual flight path varies from the calculated flight path, as disclosed in Claim 2, were conceived at least by February 5, 1998.

The additional feature of the third module comprising instructions for tracking the flight coordinates of the aircraft, as recited in Claim 9, which depends from previously discussed Claim 2, was conceived at least by February 5, 1998.

Due diligence in reducing the invention to practice was made prior to February 5, 1998. Since the effective date of Aeromed is February 5, 1998, Applicant respectfully submits that Aeromed is removed from use as a reference against Claims 2 and 9.

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Therefore, in view of the above, it is respectfully submitted that Claims 2-9 are patentable.

Discussion of Rejection Under 35 U.S.C. § 103(a)

The Examiner has rejected Claims 2-5, 10, and 15 under 35 U.S.C. § 103(a) as being obvious over Nathanson et al., U.S. Pat. No. 5,122,959 ("Nathanson"), in view of Scott Schriewer, *Airborne Ambulance Save Precious Time*, TULSA WORLD, May 22, 1996, pp. 1-2 ("Schriewer"). In addition, Claims 6-7, 11-12, and 16-17 were rejected under 35 U.S.C. § 103(a) as being obvious over Nathanson and Schriewer, and further in view of Terese Hudson, *Attorneys Fear Patient Transfer Claims in Malpractice Cases*, HOSPITALS, April 5, 1991, volume 65, issue 7, pp. 44-48 ("Hudson"). Claims 8, 13, and 18 were rejected under 35 U.S.C. § 103(a) as being obvious over Nathanson and Schriewer, and further in view of Matsumoto et al., U.S. Pat. No. 5,974,355 ("Matsumoto"). Lastly, Claims 9, 14 and 19 were rejected under 35 U.S.C. § 103(a) as being obvious over Nathanson and Schriewer, and further in view of Yee et al., U.S. Pat. No. 6,044,323 ("Yee").

Applicant respectfully submits that the rejection over Nathanson in view of Schriewer with respect to amended Claim 2 should be withdrawn.

In response to the arguments in Applicant's previous amendment, submitted on August 6, 2003, the Examiner responded:

Applicants argue that Nathanson does not disclose "instructions for determining whether the actual flight path varies from the calculated flight path." However the examiner contends that the system of Nathanson calculates parameters such as the estimated time of pickup and departure which necessarily reflect the actual flight path. Moreover, the system in Nathanson teaches a minimum path algorithm. The examiner contends that from these pieces of information, the deviation of the actual flight path from the calculated flight path (minimum path algorithm) can be determined. *O.A., at Page 5.*

Applicant respectfully submits that the pieces of information discussed by the examiner are insufficient to determine whether the actual flight path varies from the calculated flight path. Applicant respectfully submits that simply knowing an estimated time of departure and arrival is insufficient to make a determination of whether any variation from a calculated route took place. If, for example, a vehicle leaves a location exactly at the estimated time for departure and follows the calculated route exactly, but encounters unexpected delays while on that route, the actual time

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of arrival will differ from the predicted time of arrival, even though no variation from the calculated route took place. Similarly, if a vehicle leaves a location at the estimated time for departure and arrives at the destination exactly at the estimated time of arrival, but follows a route which is completely different from the calculated route, the system described in Nathanson would not be able to determine, based on the estimated and actual arrival and departure times, that a variation from the calculated route took place.

Furthermore, although the Nathanson patent discloses the use of a minimum path algorithm to calculate the minimum travel time, Nathanson does not disclose the generation of an actual travel path. At best, Nathanson discloses the mere transient display of individual positions of a vehicle on a screen. Since no generation of an actual travel path is disclosed, no recordation of an actual travel path can occur. In contrast, the present application discloses the storage of flight information, such as tracking information and information regarding diversions. This flight information when connected together via a stored list forms a flight path. Because there is no actual path information to which the Nathanson system could compare the calculated minimum path, Applicant submits that the calculated minimum path of Nathanson cannot be used to determine whether the actual path traveled by the ground vehicle varies from the calculated minimum path, as disclosed by the present application. Thus, although Nathanson teaches the calculation of a minimum path and the calculation of an estimated travel time using that minimum path, no determination of a deviation from the calculated minimum path can occur.

As can be seen in the present application, Applicant's system is configured to identify variations from a calculated flight path based on flight tracking information. Such variations in flight paths occur with far greater frequency than would similar variations from street routes taken by ground vehicles, as aircraft flight paths must regularly be adjusted due to constantly changing factors such as wind speed and direction, which would have almost no impact on the actual route taken by a ground vehicle to a destination. When flight information, such as information regarding variations and the reasons for those variations, is made available to the billing module, the bill provided to a client can more accurately reflect not only the actual cost of the flight, which is partially dependent on the actual distance traveled (and not a minimum path), but also reasons why the actual flight path differed from the calculated flight path. Thus, because the potential for variation from a calculated path is much greater for aircraft such as helicopters

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than for the ground vehicles of Nathanson, there would be no suggestion or motivation to modify the system of Nathanson such that an actual flight path would be generated and then compared to a calculated flight path.

For at least the above reasons, Applicant respectfully submits that Nathanson does not disclose instructions for determining whether the actual flight path varies from the calculated flight path, and this element is not found in Schriewer. Applicant respectfully submits that Claim 2 is not obvious over Nathanson in view of Schriewer. For this reason, Applicant respectfully requests that the rejection be reconsidered and withdrawn.

As the Action stated that Claim 10 repeats the features of Claim 2, and was rejected for the same reasons, Applicant respectfully submits that the Office reconsider and withdraw the rejection of Claim 10 for the same reasons discussed above.

The Action further stated that Claim 15 repeats the subject matter of system Claim 1 in a series of steps, rather than a set of apparatus elements, and that the underlying structure of Claim 1 was shown to be fully disclosed by Nathanson and Schriewer. Applicant assumes that the Examiner was referring to the above discussed rejection of Claim 2. As the Action stated that Claim 15 was rejected for the same reasons as given above, Applicant respectfully requests reconsideration and withdrawal of the rejection of Claim 15 for the same reasons discussed above.

As Claims 3-9, 11-14, and 16-19 depend from Claims 2, 10, and 15, respectively, Applicant respectfully requests the reconsideration and withdrawal of the rejections of those claims for having the same reasons and their additional features.

#### Support for New Claims

By this Amendment, Applicant has added new Claims 20-26. Support for new Claims 20-22 and 24 can be found at least in Figures 3 and 4B, and on pages 10, 16-17 and 19. Support for new Claims 23 and 25 can be found at least in Figures 3 and 4B, and on pages 10 16-17, 19, and 28-32. Support for new Claim 26 can be found at least in Figures 3 and 4B, and on pages 10, and 16-19.

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### CONCLUSION

Applicant has endeavored to address all of the Examiner's concerns as expressed in the outstanding Office Action. Accordingly, an amendment to the claims and arguments in support of the patentability of the pending claim set are presented above. In light of the above remarks, reconsideration and withdrawal of the outstanding rejections is specifically requested. If the Examiner finds any remaining impediment to the prompt allowance of these claims that could be clarified with a telephone conference, the Examiner is respectfully requested to initiate the same with the undersigned.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: \_\_\_\_\_

12/17/04

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